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references to Halleck. It may be inferred that the work is based largely upon what is available in fifteen or more of the better treatises and textbooks, written in English.

A survey of the sources used provokes misgiving as to whether the author was really prepared to write a treatise. Would it have been possible to present his contributions along the line of critical analysis in a smaller work on the theory of international law? Making due allowance for unfamiliarity with the continental literature, such a work could have been admirably done. Many of the criticisms which are likely to be aimed at the treatise could have been avoided.

As the work stands, it has a unique but somewhat restricted value. It is unfortunate that it should have been prejudiced by the extravagant, not to say ridiculous, claims which the publishers have made for it.

EDWIN D. DICKINSON.

OUTLINES OF HISTORICAL JURISPRUDENCE. By Sir Paul Vinogradoff, F.B.A., Fellow of the Russian Academy, Corpus Professor of Jurisprudence in the University of Oxford. Volume I, Introduction, Tribal Law. Oxford University Press, London, Edinburgh, Glasgow, New York, Toronto, Melbourne, Capetown, Bombay. Humphrey Milford, 1920. Pp. X, 428.

The title itself of this latest production of the leading English historian of law seems in a way a challenge to our up-to-the-minute twentieth century sociological jurisprudence which is the prevailing style, but Vinogradoff's historical jurisprudence is a very different thing from that of Savigny, which finally gave us a natural law with an historical content, or even from that of the English comparative jurists of the nineteenth century, who apparently assumed, "that all nations are constituted on the same lines and reproduce the same characteristic features in their treatment of economic and social problems." (Cf. p. 148). Vinogradoff would have the student of historical jurisprudence "trace the life of juridical ideas in their action and reaction on conditions"; that is, while "the order followed by legal history is chronological, that followed by historical jurisprudence is, ideological." (p. 155).

With this purpose in mind he gives in this first volume a careful re-examination of the basic legal institutions of tribal society and promises a second volume treating the jurisprudence of the Greek City on the same plan. In the execution of this he follows the lead of Maitland, whom he characterizes as the "most brilliant legal historian of modern England," in his scepticism as regards generalizations. On that much discussed question as to whether primitive society was arranged on the matriarchal or the patriarchal model, Vinogradoff says, "considering the immense variety of conditions in ancient times, it is improbable that any exclusive theory will be true in all cases." This is but one of the many instances which show that the author has successfully steered clear of the difficulties and dangers of the ideological method of presentation, which he himself admits, and has presented

in a new and clearer light the facts of primitive society "as he sees them for the God of things as they are." Furthermore, his discussion of juridical ideas as they act and react on their surroundings give to his work a sociological coloring that brings it into harmony with that of other twentieth century jurists.

His attitude toward the subject of jurisprudence in general is shown in the Introduction which constitutes about one-third of the present volume. He would draw upon the subjects of logic, of psychology and of social science in order to coördinate and explain legal rules and to assert rights. The data of ethics, he says, form a most important chapter of psychology, history cannot be contrasted with the theoretical study of law because it provides one of the essential elements of legal method while philosophy forms, as it were, the atmosphere for all scientific studies. Following the plan suggested he discusses in his first chapters the relation of law to the several subjects above mentioned and to political theory. The chapter on Law and Logic shows by many instances taken from English Law the futility of the common practice of our courts of always seeking definitions of law from which to deduce conclusions rather than by proceeding inductively to determine the rights of the parties under all the circumstances. He shows that this mechanical jurisprudence of the courts frequently brings us to the most irrelevant conclusions. He cites here also some of Ihering's brilliant and caustic criticisms of the way our Teutonic brethren have by this process built up their fantastic "jurisprudence of conceptions," but concludes that the abuse of logic ought not to obscure the value of the method when properly used. The syllogism still remains a valuable legal instrumentality but major premises must from time to time undergo a process of revaluation. Here it may be remarked that the statement that "utility, public interest, morality and justice are constantly claiming their share in the thoughts of the lawyer" might well be compared with Justice Brewer's statement in *Mueller v. Oregon*, to the effect that "we take judicial cognizance of matters of general knowledge," as showing that both the English jurisconsult and the American jurist are affected by the sociological tendencies of their environment. The same coloring is evident in the chapter on Law and Psychology. As regards the question of criminal responsibility "society understands that it has not a single force, accumulated and isolated in a single individual to contend with, but that it stands face to face with a complexity of forces converging in an individual." Hence the necessity for an individualization of the penalty. "The punishment is to fit the moral case of the criminal as the drug has to fit the pathological case of the sick man." Furthermore, while the author follows Kant in saying that the imperative of duty—what Carlyle calls the sense of the oughtness—is a category of the human mind, nevertheless, he follows Durkheim in saying that it is the influence of society which has penetrated us with the beliefs, religious, political and moral, which govern our conduct.

In the chapter on Law and Social Science the author says that there is an element of truth in each of the theories as to the nature of the State;

namely, that it is an "embodiment of power," an "organic growth" or a "judicial arrangement," but that the share to be assigned to each is "bound to vary in accordance with the epoch and the country." This last statement suggests Stammmler's "ideal of an epoch," though the author in another connection (p. 146) speaks slightly of Stammmler's contributions to jurisprudence. Vinogradoff defines the State as "an organization enforcing social order by means of legal rules."

The last half of the Introduction examines critically the work of the analytical school in the chapter on the Rationalists. In the succeeding chapter on the Nationalists the author credits the Historical School and the Romantic movement with having established the doctrine that institutions have an organic growth and with having given us a wider view of individual and social psychology. In his chapter on the Evolutionists the author goes beyond Ihering's teleological view to an idealistic one in the suggestion that it is "not wrong or presumptuous to reflect on the general principles which in the present state of civilization we ought to accept as the guiding lights for legislators and reformers."

The author would probably resent an attempt to definitely place him in any one of the accepted schools of jurisprudence but his book shows that his preëminent achievements in the field of historical jurisprudence have given him a broad outlook over the entire field of legal theory and make him a sane critic of contemporary jurists, though one may possibly feel that he has underestimated the achievement of some of his Transrhenish brethren. Possibly this may be excused as a reflex of the present world psychology.

J. H. DRAKE.

THE LIFE OF JOHN MARSHALL. By Albert J. Beveridge. Houghton Mifflin Co., Boston and New York. Four volumes, pp. lxxxii, 2412.

A valid excuse exists for writing something more of Senator Albert J. Beveridge's life of John Marshall, even though the book has already been in print for many months. The book is growing on the American public and its fame will be greater twenty years from now than it is at present. The great debt which the American people, and especially the American bar, owe Senator Beveridge is a debt that has not yet been fully realized. Comparatively few lawyers have read the work.

Strange that John Marshall, our greatest Chief Justice, should have had to wait a century for justice to be done him, and to his ability and influence on the life and institutions of America. The Beveridge life is the first one that presents the great jurist adequately and there will be no other life of John Marshall, for there is no need of one. The work need never be done again, for it has been brilliantly and satisfactorily done. The fame of Senator Beveridge as the author of the "Life of John Marshall" will outlast his fame as a Senator, an orator and a leader of the Progressive movement in the Republican party.

The objection to the book that it is prolix, is not well taken. The sub-